IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 23-11-2007

CORAM

THE HONOURABLE MR.JUSTICE S.PALANIVELU

CRIMINAL ORIGINAL PETITION No.16672 OF 2004

1.A.Rajasingh
2.T.Densingh Lasarus
3.A.Manoharan
4.M/s.Naga Limited ... Petitioners

-vs-

The Food Inspector,
Lakkampatty Panchayat,
Erode District. ... Respondent

Petition filed under Section 482 of the Code of Criminal Procedure to quash the complaint in CC.No.246/2004 on the file of the Judicial Magistrate, I, Gobichettipalayam.

For petitioners : Mr.S.R.Rajagopal

For respondent : Mr.A.Saravanan,
Govt.Advocate (Criminal Side).

O R D E R

This petition has been filed, praying to quash the complaint in C.C.No.246 of 2004 on the file of Judicial Magistrate No.I, Gobichettipalayam, Erode District.

2. Fourth petitioner is a manufacturer of wheat flour, under the name and style "Naga Whole Wheat Atta". It is stated in the petition that the product is of high quality and has earned goodwill in the market, which is known for its huge demand. The respondent filed a complaint in C.C.No.246 of 2004, alleging that he obtained samples of fourth petitioner's product, by name, Naga Whole Wheat Atta, and despatched the same for examination to Food Analysis Laboratory, King Institute Campus, Guindy, Chennai, on 10.12.2002 and the result disclosed that there was no adulteration. However, the complaint goes to the effect that packet has been misbranded as "Best within four months" in stead of "Best before ..... months from manufacture or packaging".

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3. The gravamen of the complaint is that the above said misbranding is in violation of Rule 32 (i) of Prevention of Food Adulteration Rules,1955, and the declaration would deceive the attention of the consumers and that only if the printing on the cover contains the brand as mentioned in the Rules, it would be in accordance with law. Hence, it is stated that the manufacturer of the food product in question has committed an offence under Section 7 (ii) read with Sec.16 (1) (a) (i) read with Section 2 (ix) (k) of the Prevention of Food Adulteration Act,1954, (in short, 'the Act') and Rule 32 (i) of the Prevention of Food Adulteration Rules,1955, (in short, 'the Rules').

4. In the petition, the petitioners, namely, accused 1 to 4, have mentioned the other circumstances, which would vitiate the process adopted by the Food Inspector, to show that the complaint does not stand legally.

5. The first ground adduced, assailing the process, is that the complainant has failed to give notice in writing, as adumbrated in Section 11 (1) (A) of the Act, which is mandatory; hence, initiation of prosecution against the petitioners does not conform to the legal procedure, and, as such, it would fall to the ground. It is further stated that failure on the part of the complainant to exercise his rights to enquire whether the vendor purchased the said package from an authorised dealer or received the same from the manufacturer has not been verified, before launching the prosecution.

6. Secondly, it is mentioned that under Section 11 (1), the provision requires the samples to be divided into three parts and thereafter only, marking, sealing and fastening up each part are to be done and that the statute requires obtaining signature of the person from whom the sample is taken, but the complaint does not narrate the particulars and, hence, it is a sheer violation of the mandatory provision, as aforementioned.

7. Lastly, it is contended that under Section 11 (c) (i), the sample must be despatched for analysis to the Public Analyst under intimation to the local (health) authority and, thereafter, the remaining two parts have to be sent to the local (health) authority, for the purposes of Section 11 (2) and Section 13 (2A) and (3E), but, in this case, all the samples were sent to the Public Analyst, King Institute Campus, Guindy.

8. On the strength of above said factual backdrop of circumstances, the petitioners would attack the process, mentioned in the complaint.

9. As far as the above said grounds are concerned, whether the settled and codified procedures have been violated or not, could be gone into only after appreciation of oral evidence in that regard

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by the trial Court, after examination of the parties. The niceties of the matter could be legally discussed only on the factual background, which would be obtained at the time of examination of witnesses and that stage has not reached so far. The grievance of the petitioners cannot be countenanced at this stage, since this Court is not sitting on appraisal of oral testimonies, which are yet to be recorded by the trial Court.

10. Under the circumstances, the observation of this Court would be that only after recording of oral evidence of the parties to the case, the finding, as to whether the prescribed procedures in the Act and the Rules have been complied with, shall be rendered by the trial Court.

11. Adverting to the legal scenario, learned counsel for the petitioners would very much stress his contention that the respondent has interpreted the terms in Section 32 (i) of the Rules in a wrong manner, which would not get any support from the well settled legal principles.

12. In this context, it is beneficial to extract Rule 32 of the Rules, which goes thus :

> "Rule 32 : Package of food to carry a label :- Every package of food shall carry a label and unless otherwise provided in these rules, there shall be specified on every label -
>
> (i) the month and year in capital letters up to which the product is best for consumption in the following manner, namely --
>
> "BEST BEFORE ..... MONTHS AND YEAR"
> OR
> "BEST BEFORE ..... MONTHS FROM PACKING"
> OR
> "BEST BEFORE ..... MONTHS FROM MANUFACTURE"
> OR
> "BEST BEFORE UP TO MONTH AND YEAR ...")
> (For the period up to)
> OR
> "BEST BEFORE WITHIN .... MONTHS AND) and inclusive
> FROM THE DATE OF

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PACKAGING/MANUFACTURE") of 1st September
(Note : Blank be filled up) 2001 :]"

13. Learned counsel for the petitioners relied upon a decision of this Court in T.Prabhu & another v. The State, 2007-1-L.W.(Crl.)367, wherein, on the discussion taken up in Rule 32, it was held that the language "best before .... months", could in no way be misled for the term "best before within twelve months". The operative portion of the said decision is as follows :

> "Though it is specifically instructed in the Rules that "within" must be omitted after 01.09.2001, merely by adding such word, the customers are not misled or misdirected. I do not find any difference otherwise in the meaning conveyed. The date of packing has been specifically mentioned as 26.05.2004. By using the language "best before ..... months", the meaning to be conveyed is, the customers must use it before twelve months" and such meaning has been conveyed by this language "best before within twelve months". Prior to 1.9.2001, it was the approved language by the Department. Under such circumstances, I do not find any merit in the prosecution for misbranding. Hence, the proceedings pending against the petitioners in S.T.C.No.1403 of 2005 on the file of the learned Judicial Magistrate No.VII, Coimbatore, are liable to be quashed and it is, accordingly, quashed...."

14. In a recent unreported decision of the Madurai Bench of this Court in Criminal O.P.No.15161 of 2004, dated 09.06.2007, the above decision has been referred to and a learned single Judge has refused to take a different view from the one taken in the above said ruling.

15. Even though the terminology found in both the terms differ in appearance, actually, no consumer would definitely be misguided, if he happens to see the term "best within four months". Even if the words "best before four months from manufacture or packaging" are not there, and, instead, the words "best within four months" are there, it will not, in any way, mislead the consumer and, by no stretch of imagination, it could be termed that the product has been misbranded. It is to be seen that the product is not adulterated and only an allegation of misbranding is there.

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16. As stated supra, it is to be held that no question of misbranding has arisen in this case and the mere change of words would in no way mislead the usage of the product among the public. Hence, it is futile to contend that the product has been misbranded. As the subject in question has been repeatedly enlightened by this Court as to the employment of words on the packets, it must be concluded that there is no misbranding in this case, in legal parlance.

17. In the light of the observations made above, the complaint in C.C.No.246 of 2004 on the file of Judicial Magistrate No.I, Gobichettipalayam, is liable to be quashed, which is, accordingly, quashed. As such, this petition is allowed. Consequently, the connected Criminal M.P.No.5965 of 2004 is closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To
1. The Judicial Magistrate I, Gobichettipalayam.

2. -do- through the Chief Judicial Magistrate, Erode.

3. The Public Prosecutor, High Court, Madras.

+ 1 CC To Mr. S.R.Rajagopal, Advocate SR NO.69899

CRL.O.P.No.16672 OF 2004

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